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No. 82-1471

In The

Supreme Court of the United States

October Term, 1982

THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,

Petitioner,

vs.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF MISSOULA, AND HAVRE FEDERAL SAVINGS AND LOAN ASSOCIATON,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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The respondents, First Federal Savings and Loan Association of Missoula, and Havre Federal Savings and Loan Association, respectfully pray that this Court deny issuance of a writ of certiorari to review the judgement and opinion of the Supreme Court of Montana entered in the above matter.

OPINION BELOW AND JURISDICTION

Respondents agree that the Opinion below is as set forth in the petition and respondents agree with the jurisdictional state-

ment in the petition.

STATUTES INVOLVED

Petitioner has set forth in its petition and the appendix thereto most of the federal statutes and Montana state statutes involved in this matter. However, petitioner has neglected to mention section 15-31-121, of the Montana Code Annotated, which was the statute relied upon by the Montana Supreme Court in rendering its opinion herein.

Montana Code Annotated:

> **15-31-121. Rate of tax-minimum tax.**
> (1) Percentage of net income to be paid under 15-31-101 shall be six and three-quarters percent of all net income for the taxable period. The rate set forth in this part shall be effective for all taxable years ending on or after February 20, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.
>
> (2) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax not less than fifty dollars.

QUESTION PRESENTED FOR REVIEW

Whether the State of Montana can include interest income from certain federal obligations in the net income of respondents and subject this income to taxation by and through the Montana Corporation License Tax imposed by sections 15-31-101 et seq., Montana Code Annotated.

STATEMENT OF THE CASE

Respondents are federally chartered savings and loan associations doing business in the State of Montana. As such, respondents are subject to the Montana Corporation License

Tax set out in Title 15, Chapter 31, Parts 1 through 7, of the Montana Code Annotated. Petitioner is the state agency responsible for collecting the Montana Corporation License Tax.

Prior to the tax year beginning on or after Decembers 31, 1978, respondents, in computing net income for the Montana Corporation License Tax, were allowed to deduct interest income from obligations of state and political subdivisions of the state from gross income. Section 15-31-114(5), Montana Code Annotated (1978). Pursuant to this section, the petitioner adopted a regulation allowing a like deduction for interest income from United States obligations because federal law required that interest income from such obligations be treated the same as interest income from state obligations for purposes of state taxation. In promulgating this regulation, petitioner relied upon 31 U.S.C. § 742.

In 1979, the Montana legislature enacted House Bill 150, Chapter 634, Laws of Montana, 1979. This act repealed the deduction from gross income of interest income from obligations of state and political subdivisions for tax years beginning on or after December 31, 1978. The intent of the legislature was to subject interest income from federal obligations to the Montana Corporation License Tax. With this legislation, interest income from federal obligations and state and local obligations was to be included in gross income for purposes of this tax. In their returns for tax year 1979, respondents deducted interest income from certain federal obligations from their gross income to arrive at net income for purposes of the Montana Corporation License Tax. The obligations as to which respondents deducted interest income were: United States Treasury Bills, Federal Home Loan Bank notes and dividends, Federal Land Bank obligations, Federal Farm Credit Bank securities, Federal Home Loan Bank dividends, and Federal Savings and Loan Insurance Corporation securities. Respondents took these deductions on the basis of the federal statutes authorizing the issuance

of these obligations, each of which specifically provided that the interest income from these obligations is exempt from all state taxation.

On or about June 24, 1980, petitioner issued a deficiency notice to respondent, First Federal Savings and Loan Association of Missoula, disallowing the deduction for interest income on these obligations and assessing a tax deficiency for tax year 1979. Respondent filed a written protest against this deficiency assessment with petitioner. On or about August 27, 1980, petitioner issued a deficiency notice to respondent, Havre Federal Savings and Loan Association, disallowing its deductions of interest income on the United States obligations. This respondent also submitted a written protest against this deficiency notice. Thereafter, respondents filed a declaratory judgement action in the District Court of the First Judicial District of the State of Montana in and for the County of Lewis and Clark, asking the District Court to declare that, while 31 U.S.C. § 742 generally allows taxation of interest income from federal obligations by a nondiscriminatory franchise tax, this statute does not repeal, amend, nullify, or control the specific federal statutes creating the specific federal obligations involved herein and, since those statutes precluded state taxation of interest income from these federal securities, this exemption applied to franchise taxation as well as all other forms of state taxation.

After this litigation was commenced, petitioner and respondents agreed that there were no issues of fact to be presented to the District Court and that the only issues were issues of law. Accordingly, each party moved for summary judgement herein. The District Court granted petitioner's motion for summary judgement and ruled that this interest income from the federal obligations was subject to taxation under the Montana Corporation License Tax.

Respondents then appealed from the order of the District Court to the Montana Supreme Court. The Montana Supreme

Court, after reviewing lengthy briefs submitted by both parties concerning the history and purpose of 31 U.S.C. § 742 and the case law in Montana pertaining to the Montana Corporation License Tax, plus listening to a lengthy oral judgement by counsel for both parties, reversed the District Court and held that interest income received by respondents from the specific federal obligations involved herein was not includable in net income for purposes of the Montana Corporation License Tax and that, on the basis of section 15-31-122, Montana Code Annotated, and the case of Security Bank v. Connors and Colbo, 170 Mont. 59, 550 P.2d 1313 (1976), the Montana Corporation License Tax was imposed both on the privilege of doing business and on the net income of respondents.

Petitioner submitted a petition for rehearing to the Montana Supreme Court requesting that the Court clarify its opinion herein. Several amicus curiae then appeared to argue in favor of this petition for rehearing. The Court, after considering the briefs submitted by petitioner and the amicus curiae as well as respondents' briefs in opposition to the petition for rehearing, denied the petition for rehearing on December 6, 1982. Pursuant to the remittitur of the Montana Supreme Court, the District Cot of the First Judicial District of the County of Lewis and Clark then entered a new order and judgement in this cause declaring that the interest income from these specific federal obligations involved in this litigation was exempt from taxation under the Montana Corporation License Tax. Thereafter, petitioner sought and obtained a stay of execution on this judgement pending its filing of a petition for certiorari with this Court. Petitioner's writ was filed in March of 1983.

Between the time that petitioner obtained its stay of the final judgement of the District Court and its filing of the petition for writ of certiorari with this Court, the Montana legislature enacted Senate Bill No. 335 of the 48th Legislative Session of the State of Montana, which was specifically designed to address the opinion of the Montana Supreme Court herein and the judgement of the District Court entered in accordance

therewith. This bill became law in April of 1983, with an immediate effective date, and was to apply retroactively to tax years beginning on or after December 31, 1978. This bill is set forth in the appendix hereto as pages 1 through 5.

ARGUMENTS FOR DENYING A WRIT OF CERTIORARI

A. PASSAGE OF SENATE BILL NO. 335 HAS MADE THIS PETITION FOR CERTIORARI AND THE ISSUES INVOLVED HEREIN MOOT.

The issue presented and argued by respondent in this litigation was whether the interest income from the specific federal obligations involved herein was subject to taxation under the Montana Corporation License Tax. Respondents' contention was that this tax, as a franchise tax, could not reach the interest income from these specific federal obligation since the federal statutes authorizing their issuance specifically provided that interest income from these obligations was exempt from all state taxation. The Montana Supreme Court agreed with the position of respondents and held that the interest income from these obligations could not be included in net income for purposes of the Montana Corporation License Tax. When petitioner's petition for rehearing to the Montana Supreme Court was denied, the Montana legislature, through its Revenue Oversight Committee began looking at new methods of taxing financial institutions such as respondents here. One of the methods was set forth in Senate Bill No. 335 of the 48th Legislature of the State of Montana, which has now become law.

Essentially, this bill disallows any deduction of interest income from tax exempt federal obligations for purposes of the Montana Corporation License Tax. The bill also extends the disallowance of this deduction retroactively to all taxable periods during which such income was excluded from gross income. This means that, while respondents may obtain refunds of the taxes they paid under protest, as indicated in the District Court judgement entered in accordance with the Montana Supreme Court opinion herein, respondents, in applying for a

refund, will have to recalculate their taxes based upon Senate Bill No. 335 and, in particular, section 1 thereof, Appendix, pages 3a and 4a. The whole purpose of respondents' bringing this litigation was to have the question determined as to whether the interest income from these specific federal obligations was subject to taxation under the Montana Corporation License Tax. While the Montana Supreme Court has agreed with the position of respondents that this interest income from these particular federal obligations cannot be taxed under the Montana Corporation License Tax, the passage of Senate Bill No. 335 renders this decision by the Montana Supreme Court meaningless. If respondents have previously deducted this interest income from their tax returns, they will be required under section 6 of Senate Bill No. 335 to recalculate their taxes on the basis of section 1 of this bill. If taxpayers, such as respondents, seek refunds on taxes already paid on the basis of the decision of the Montana Supreme Court herein, they will be required under section 6 of Senate Bill No. 335, to recalculate their taxes on the basis of section 1 of that bill.

Since the time of the decision by the Montana Supreme Court herein, the Montana legislature has changed the law such that if interest income from these federal obligations is excluded in any fashion, then the corporate taxpayer will lose deduction that it was previously entitled to for interest expense incurred in obtaining these tax-exempt federal obligations. Therefore, the issue as to whether the interest income from the specific federal obligations is subject to taxation under the Montana Corporation License Tax is moot because the taxpayer must either include the interest income or, if it is excluded, he must recalculate his interest expense deduction, on the basis of Senate Bill No. 335 and pay taxes on the disallowed interest expense.

Petitioner with its petition for a writ of certiorari is asking this Court to review a question that is moot due to the changes made in the Montana Corporation License Tax by the Montana legislature in light of the decision of the Montana Supreme Court herein. This Court should not grant the petition for certiorari since affirmation of the decision of the Montana

Supreme Court or reversal of that decision will have no effect upon taxes being assessed or paid in Montana under the Montana Corporation License Tax in light of the passage and approval of Senate Bill No. 335.

B. THIS COURT IS BEING ASKED TO RENDER AN ADVISORY OPINION ON THE QUESTION OF WHETHER THE MONTANA CORPORATE LICENSE TAX IS A FRANCHISE TAX WHICH EXCEEDS THE SCOPE OF THE ISSUES RAISED IN THE COURTS BELOW.

As pointed out in the petition for certiorari, on page 11 thereof, respondents never questioned the nature of the Montana Corporation License Tax as being something other than a franchise tax. Petitioner, in its answer to respondents' complaint and in its briefs filed with the Montana Supreme Court, took the position that the Montana Corporation License Tax was a franchise tax. Petitioner never took the position that, if the tax is not a franchise tax, it is at the very least a "nonproperty tax in lieu thereof imposed on corporations" which would still fall within the exception of 31 U.S.C. § 742. See, page 12 of the petition. Since there was no argument raised in the District Court of the First Judicial District of the State of Montana or in the Montana Supreme Court in this litigation as to whether the Montana Corporation License Tax was something other than a franchise tax and respondents and petitioner having never raised the question that, even if the tax was construed to be something other than a franchise tax, that it is a nonproperty tax imposed on corporations in lieu thereof, this Court is being asked to render an advisory opinion on an issue that is not in dispute between petitioner and respondents. Such a decision would exceed the scope of respondents' petition for declaratory judgement herein and would be contrary to the Montana declaratory judgement act.

It has been held, in Montana, that a court in a declaratory judgement action has no jurisdiction to determine matters purely speculative, enter anticipatory judgements, declare social status, deal with theoretical problems, give advisory opinions, answer moot questions, adjudicate academic matters, provide

for contingencies which may hereafter arise, or give abstract opinions. Mt. Dept. of Nat. Res. and Conser. v. Intake Water Company, 171 Mont. 416, 440, 558 P.2d 1110 (1976). Here, petitioners are asking this Court, as they did in their petition for rehearing to the Montana Supreme Court, to render an advisory opinion as to whether the Montana Corporation License Tax is a franchise tax, when this issue was not in dispute between the parties hereto. As was argued to the Montana Supreme Court in response to the amicus curiae briefs in support of the petition for rehearing, the duty of a court is to adjudicate actual or real controversies existing among parties with adverse interests and conflicting claims. Here, respondents and petitioner have no adverse or conflicting claim with regard to whether the Montana Corporation License Tax is a franchise tax. Their only conflicting claim is whether the interest income from the specific federal obligations involved herein can be subject to tax under the Montana Corporation License Tax. By asking this Court to rule on whether the Montana Corporation License Tax is a franchise tax or, at least, a nonproperty tax imposed on corporations in lieu thereof, petitioner is asking this Court to rule on an issue that was not in dispute between these parties and was not argued or briefed to either the Montana Supreme Court or the District Court herein. Petitioner is asking this Court to render an advisory opinion on the question of whether the Montana Corporation License Tax is a franchise tax, or a nonproperty tax imposed on corporations in lieu thereof. This Court should, therefore, deny this petition for certiorari since the issue the petitioner attempts to raise exceeds the scope of the issues raised in the courts below and petitioner is asking this Court to require respondents to argue a question that respondents cannot argue since it is their position that the Montana Corporation License Tax is a franchise tax.

C. THE MONTANA SUPREME COURT FULLY CONSIDERED THE ISSUES PRESENT HERE AND DECIDED THE SAME CORRECTLY.

The issue before the Montana Supreme Court was whether

the District Court of the First Judicial District of the State of Montana erred by deciding that interest income from certain federal obligations held by respondents was includable in net income and hence subject to the Montana Corporation License Tax. See Appendix to Petitioner's Petition, page 4a. The Montana Supreme Court recognized that the District Court had predicated its decision that this interest income was includable in net income on the basis of 31 U.S.C. § 742. The Court then went on to say:

> The District Court reasoned that the exception stated in the above federal statute applied to the Montana Corporation License Tax, which is admitted by the parties herein to be a franchise tax, and hence the interest income from the federal obligations is includable in the net income which is the basis upon which the license tax is computed.
>
> The taxpayers unsuccessfully contended in the District Court that the specific federal statutes which created the federal obligations and authorized their issuance expressly exempted both the principal and the interest paid thereon from all state taxation except estate and gift taxes. The federal statutes which created the federal obligations involved herein, authorized their issuance and contained the exemption are: 12 U.S.C. § 1433 (1976); 12 U.S.C. § 1725(e) (1976); 12 U.S.C. § 2055 (1976); 12 U.S.C. § 2079 (1976); 12 U.S.C. § 2134 (1976); and 31 U.S.C. § 769 (1976). Those federal statutes expressly provide that the principal and interest of various federal obligations are exempt from all state taxation except certain taxes not relevant here.
>
> The Department argued that the Montana Corporation License Tax is a franchise tax on the privilege of doing business in Montana with the tax based upon or measured by the net income of the taxpayer. Hence, it was argued that the tax is not on the property (interest income) but is on the privilege. This Court finds the argument to be unpersuasive. It is a distinction without a difference in our

opinion. If the franchise tax is on the privilege and the tax is based on the net income, this Court concludes that the tax is on the privilege and on the net income. If the net income includes tax exempt interest, the tax is on exempt income which is prohibited by the specific federal statutes creating the federal obligations and granting the tax exemption. The Montana Supreme Court held in 1976 in the case of Security Bank v. Connors and Colbo (1976), 170 Mont. 59, 550 P.2d 1313, that the Montana Corporation License Tax is a tax on net income. It also appears to this Court that by the Department's including the tax exempt interest in net income, the Department is seeking to tax indirectly what it cannot tax directly, in violation of the general rule set forth in Section 31 U.S.C. § 742 (1976). See Federal Products Corp. v. Norberg, (R.I. 1981), 429 A.2d 447.

First Federal Savings and Loan Association v. Department of Revenue, _____ Mont. _____, 654 P.2d 496 (1982), Appendix to Petitioner's Writ, pages 5a and 6a.

As can be seen from the above quotation, the Montana Supreme Court based its decision herein on three points. First, the Montana Supreme Court, contrary to the argument made in the petition on page 11 thereof, had held in the case of Security Bank v. Connors and Colbo, supra., that the Montana Corporation License Tax was a tax on net income. The Montana Supreme Court reached this result in Security Bank on the basis of the plain language of the corporate license tax, as set forth in section 15-31-122, Montana Code Annotated, which imposes a tax of 6¾ percent of the net income. While the Montana court recognized that the corporate license tax was a franchise tax, as conceded by the parties to this litigation, and recognized that the tax is imposed on the privilege of doing business, the Court was compelled to conclude on the basis of the plain language of the aforementioned statute that the tax was also imposed on the net income. Net income was simply not just a measuring devise for purposes of the tax, under the plain language of the Mon-

tana act. Secondly, the Montana Court recognized, as was argued to it and again contrary to the statements made in the petition on page 15 thereof, that 31 U.S.C. § 742 contained no exemptive language with regard to interest income from federal obligations until 1959 whereas the federal statutes relied upon by respondents herein have since the date of their enactment, prior to 1959, contained specific language prohibiting state taxation of the interest income from these obligations. This Court has recognized, when addressing the question of whether a franchise tax can reach interest income from certain federal obligations with specific exemptive language for the interest income similar to that involved herein, that, while franchise taxes generally can be measured by tax-exempt securities, interest income from Liberty Bonds and Federal Farm Loan Bonds cannot be included in the measure of a franchise tax since the statutes authorizing the issuance of those obligations expressly prohibit taxation of the income from those obligations. Macallen Company v. Massachusetts, 279 U.S. 620, 49 S. Ct. 432, 72 L.Ed. 874 (1929); Miller v. Milwaukee, 272 U.S. 709, 47 S. Ct. 280, 71 L.Ed. 487 (1927). This Court has also refused to grant a petition for certiorari where the sole question involved was whether interest income from Liberty Bonds, which was declared to be tax exempt from all state taxation, could be reached by a franchise tax in the District of Columbia. See, District of Columbia v. Riggs National Bank, 30 F. 2d 873 (D.C. Ct. of Appeals, 1929), cert. denied, 279 U.S. 846, 49 S.Ct. 343, 73 L.Ed. 991. Finally, the Montana Supreme Court recognized that in amending 31 U.S.C. § 742 in 1959, Congress inserted language therein prohibiting both direct and indirect taxation of interest income from federal obligations. The Montana Court then applied this direct and indirect language to the specific federal statutes involved herein, on the basis of the case of Federal Products Corp., v. Norbert, 429 A.2d 442 (R.I. 1981) and held that petitioner was attempting to indirectly tax the interest income from these federal obligations by and through a franchise tax, which was not permissible under the plain language of 31 U.S.C. § 742. It was also pointed out to the Montana Supreme Court and implicitly recognized by it in the

above quoted language, that to hold that the taxation of the interest income from these specific federal obligations by and through a franchise tax is governed by 31 U.S.C. § 742, would render the particular federal statutes involved herein meaningless. This Court has held that is is a rule of federal statutory construction that a court will not lightly conclude that a Congressional enactment has no purpose or function, but will strive to give appropriate meaning to each of the statute's provisions. Merchantile Nat. Bank v. Langdeau, 371 U.S. 555, 83 S. Ct. 520, 9 L.Ed. 2d 523; Roseto v. Wyman, 397 U.S. 397, 90 S. Ct. 1207, 25 L.Ed. 2d 442. It was respondents' position that the only way to give appropriate meaning to the statutes relied upon by them was to declare the interest income from these specific federal obligations exempt from the reach of the Montana Corporation License Tax. By asking this Court to grant the petition for certiorari and to reverse the decision of the Montana Supreme Court, petitioners are asking this Court to violate its rules of statutory construction as set forth above.

The decision of the Montana Supreme Court was proper herein since it gives effect to the statutes relied upon by respondents in this matter. The Court also recognized that, as this Court has held a number of times, where Congress has spoken on the immunity from state taxation of a federal obligation or the interest therefrom, full effect is given to this Congressional expression of immunity. Pittman v. Home Owners Loan Corp., 308 U.S. 21, 60 Sup. Ct. 15, 84 L.Ed. 16 (1939); Helvering v. Gearhardt, 304 U.S. 405, 58 Sup. Ct. 969, 82 L.Ed. 1427 (1938). The federal statutes involved herein declare that the interest income from these specific federal obligations is exempt from all state taxation. Congress has spoken as to the immunity of this interest income from state taxation. It did not put any condition on this immunity that it did not apply to franchise taxation or other nonproperty taxation in lieu thereof. Congress specifically declared this interest income to be tax exempt. If petitioner and amicus curiae believe that this interest income should be subject to franchise taxation, then this is a question for Congress to address. It was Congress which passed these

particular federal statutues declaring this interest income to be exempt from all state taxation. It can be noted that, when Congress amended 31 U.S.C. § in 1959, it did not amend these particular federal statutes although it did repeal certain other federal statutes similar to those involved herein. See P.L. 86-346, Title I, Section 105(b), 73 Stat. 622. The statutes Congress repealed were those pertaining to Second Liberty Bond issue, United States Treasury Notes, and United States Certificates of Indebtedness and Treasury Bills (other than those in question here), all of which contained provisions specifically exempting interest income from those obligations from any form of state taxation. See 31 U.S.C. § 747 (1959); 31 U.S.C. § 753 (1959); and 31 U.S.C. § 754 (1959). Congress repealed these specific exemptions at the time that it amended 31 U.S.C. § 742. Since Congress saw fit to repeal these particular statutes, which are similar to the ones involved herein, but did not feel compelled to repeal the statutes relied upon by respondents and relied upon by the Montana Supreme Court in rendering its decision herein, the only conclusion that can be reached is that Congress intended that the interest income from these particular federal obligations should continue to be exempt from all state taxation, including franchise taxation, despite the broad authorization for such taxation set forth in 31 U.S.C. § 742. If it is the intent of Congress that the interest income from the federal obligations held by respondents should be subject to franchise taxation, then Congress should so declare by amending or repealing the statutes involved herein.

CONCLUSION

For the reasons set forth above, the respondents herein submit that a writ of certiorari should not be granted in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Edmund F. Sheehy, Jr., a member of the Bar of the Supreme Court of the United States and counsel of record for First Federal Savings and Loan Association of Missoula and Havre Federal Savings and Loan Association, respondents herein, hereby certify that on May 18, 1983, I served three copies of the Brief in Opposition to the Petition for Certiorari on each of the parties herein, as follows:

On Department of Revenue, State of Montana, petitioner herein, by depositing such copies in the United States Post Office, Kalispell, Montana, with first class postage prepaid, properly addressed to the post office address of Michael J. Rieley, the above named petitioner's counsel of record, at Mitchell Building, Helena, Montana, 59620.

On the amicus curiae herein, by depositing such copies in the United States Post Office, Kalispell, Montana, with first class postage prepaid, properly addressed to the post office address of John Van deCamp, Attorney General of California, the counsel of record for amicus curiae, at 3580 Wilshire Boulevard, Los Angeles, California, 90010, and William D. Dexter, General Counsel, Multistate Tax Commission, 204 Custer Way, Tumwater, Washington, 98501.

All parties required to be served have been served.

DATED May 18, 1983.

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APPENDIX

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APPENDIX

SENATE BILL NO. 335
INTRODUCED BY TOWE, ET AL.

A BILL FOR AN ACT ENTITLED: "AN ACT TO DISALLOW DEDUCTIONS RELATED TO EXCLUDED INTEREST INCOME FOR MONTANA CORPORATION LICENSE TAX PURPOSES; TO APPLY THE DISALLOWANCE DEDUCTION RETROACTIVELY TO ALL TAXABLE PERIODS DURING WHICH SUCH INCOME IS EXCLUDED FROM GROSS INCOME: PROHIBITING CONSOLIDATED RETURNS FOR FINANCIAL INSTITUTIONS UNDER THE CORPORATE LICENSE TAX; REAFFIRMING THE INCLUSION OF STATE AND LOCAL BOND INCOME IN THE DEFINITION OF NET INCOME FOR CORPORATION LICENSE TAX PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

WHEREAS, the Montana Corporation License Tax Act (Title 15, chapter 31, part 1) was intended, after the enactment of Chapter 634, Laws of 1979, to require all corporations to report and pay a tax upon all income derived from obligations of the United States or its agencies or instrumentalities as permitted by Title 31, section 742, United States Code; and

WHEREAS, the Montana Supreme Court on September 23, 1982 (petition for rehearing denied December 6, 1982), decided in the case cited below that such income must be excluded from the measure of the subject tax; and

WHEREAS, the Legislature disagrees with the Montana Supreme Court's decision in the case of First Federal Savings and Loan Association, a Federally Chartered Association, et al., Plaintiffs and Appellants v. Department of Revenue, et al., Defendants and Respondents, Cause No. 81-528, and has filed through its Revenue Oversight Committee, an Amicus Curiae brief in support of the position of the Department of Revenue; and

WHEREAS, the Department of Revenue is presently seeking to have the United States Supreme Court review the matter, and at this time other decisions are also being reviewed by the United States Supreme Court that might have a bearing on the issue of the taxability of such income; and

WHEREAS, in the interim uncertainty exists as to the taxability of such income and claims for refund of tax and returns of income will be made by corporations based upon the exclusion of such income; and

WHEREAS, the Legislature desires to maintain approximately the current level of revenue to state and local government; and

WHEREAS, immediate legislative action is necessary.

THEREFORE, it is the intent of the Legislature to proportionately reduce the allowable deductions to all corporations for all taxable periods for which interest income is excluded or claim for refund of tax is made upon such exclusion under claim of right under federal law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Reduction of deductions relating to excluded income. (1) A corporation, taxable under Title 15, chapter 31, part 1, that excludes interest from gross income which would be taxable except for federal law which must adjust its allowable deductions for all taxable periods for which interest is excluded in the following manner:

(a) the total amount of interest excluded from gross income by federal law must be determined;

(b) the total amount of all interest income from all sources must be determined;

(c) the ratio of excluded interest income to all interest income

must be determined; and

(d) the total deductions allowable under 15-31-114 must be reduced by an amount determined by multiplying the amount of deduction otherwise allowable by the ratio of excluded interest to all interest income; however, the product of this calculation may not exceed the amount of excluded interest income.

(2) Allowable deduction must be reduced with respect to all corporations that exclude interest income otherwise taxable upon returns filed for all taxable periods for which such exclusion is claimed and for all taxable periods for which a claim for refund is made.

THERE IS A NEW MCA SECTION THAT READS:

Section 2. Consolidate returns prohibited. (1) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.

(2) In accordance with subsection (1), financial institutions are prohibited from filing consolidated returns under 15-31-141.

THERE IS A NEW MCA SECTION THAT READS:

Section 3. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes. Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of

such income from the tax base of the corporation license tax.

Section 4. Codification instructions. Sections 1 through 3 are intended to be codified as integral parts of Title 15, chapter 31, part 1.

Section 5. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid on one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date — applicability dates. This act is effective on passage and approval. Sections 1 and 3 of this act apply retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsquently claims a refund of taxes paid based upon federal law. Section 2 of this act applies to taxable periods beginning after December 31, 1982.